

STAND. COM. REP. NO. **2434**

Honolulu, Hawaii

FEB 14 2014

RE: S.B. No. 1038
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 1038 entitled:

"A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT
SYSTEM, "

begs leave to report as follows:

The purpose and intent of this measure is to amend chapter
88, Hawaii Revised Statutes (chapter 88), to:

- (1) Establish that certain terms referencing a marital relationship under chapter 88, include civil union partners and civil unions unless the recognition of a civil union as a marriage conflicts with the requirements for the Employees' Retirement System to be a tax-qualified plan under the Internal Revenue Code; and
- (2) Make conforming amendments under chapter 88 to repeal specific references to civil unions that are superfluous.

Your Committee did not receive any testimony on this measure.

Prior to the hearing on this measure, your Committee posted and made available for public review a proposed S.D. 1, which amends this measure by deleting its contents and inserting language to:



- (1) Require the Employees' Retirement System to forfeit the employer's contribution and interest portion of retirement benefits upon a member's final conviction of or pleading guilty or nolo contendere to a felony;
- (2) Establish that the forfeiture of retirement benefits does not include a member's contributions to the System or vested retirement benefits;
- (3) Apply forfeiture of benefits to members who leave active employment if the conviction or plea is for a felony committed while the member was an employee and the felony committed includes bribery, corruption, forgery, perjury, or any other crime related to the duties of the member's employment; and
- (4) Establish procedures for the forfeiture of retirement benefits.

Your Committee received comments on the proposed S.D. 1 from the Employees' Retirement System.

Your Committee finds that reports of government employees convicted of felony crimes related to the duties of the employees' jobs, such as stealing money from their places of employment, erode the public's confidence in state and county government. The proposed S.D. 1 requires the Employees' Retirement System to forfeit the employer's contribution and interest portion of retirement benefits upon a member's final conviction of or pleading guilty or nolo contendere to a felony.

However, your Committee has concerns whether the forfeiture of retirement benefits is unconstitutional. Specifically, article XVI, section 2, of the Hawaii State Constitution states, "Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired." As a result, the Employees' Retirement System testified to your Committee that after its submission of written testimony on the proposed S.D. 1, the Board of Trustees of the Employees' Retirement System convened a meeting and developed language to address the constitutional concerns in the proposed S.D. 1 and other concerns raised in the System's submitted written testimony.

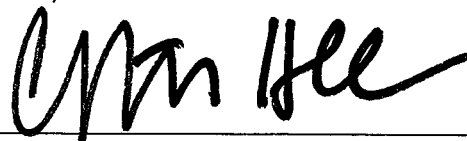


Accordingly, your Committee has amended this measure by deleting its contents and inserting language suggested by the Employees' Retirement System to:

- (1) Allow the court to decree a forfeiture by the member, former member, or retirant of all or a portion of any retirement benefit that the member, former member, or retirant may otherwise be entitled to if a member, former member, or retirant is convicted of a felony and the court finds that the felony is related to the employment of the member, former member, or retirant by the State or any county;
- (2) Specify that the retirement benefits of the member, former member, or retirant subject to forfeiture include interest, hypothetical account balance (in excess of the amount representing any employee contributions made by or on behalf of the member, former member, or retirant), pension, annuity, or retirement allowance; and
- (3) Require the Employees' Retirement System to comply with the court order and suspend or deny payment to the member, former member, or retirant as provided in the order unless a certified order requires the System to resume payments or quash or reverse the decree of forfeiture.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1038, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1038, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



Record of Votes
Committee on Judiciary and Labor
JDL

*Only one measure per Record of Votes